Editor's note: Reconsideration granted; decision modified by Order dated April 24, 1987 -- See 95 IBLA 36A below.

DONALD D. HALL ET AL.

IBLA 85-782 Decided December 15, 1986

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting mining claim recordation filings and declaring claims null and void. AA-53211 through AA-53218.

Affirmed in part; set aside in part and remanded.

1. Mining Claims: Placer Claims

   An association of two locators may locate an association placer claim of 40 acres. 43 CFR 3842.1-2(c). Where evidence of record is incomplete and inconclusive as to whether mining claims were located as association placer claims on behalf of an association of locators, or were located on behalf of a corporation, the BLM decision rejecting the filing of the location notices for the claims will be set aside and the case remanded for further investigation into the exact circumstances of the location of the claims.

2. Alaska Native Claims Settlement Act: Conveyances: Cemetery Sites and Historical Places

   Applications by regional corporations for fee title to historical places pursuant to 43 U.S.C. § 1613(h)(1) (1982) segregate the land from appropriation under the public land laws, including the mining and mineral leasing laws. Mining claims subsequently located on segregated land are properly declared null and void ab initio.

APPEARANCES: Donald D. Hall for appellants.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Donald D. Hall, John Hite, and John Ruckmick have appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated May 30, 1985, which rejected the filing of mining claim location notices for eight placer mining claims (MP-1 through MP-8). The claims are located within an area encompassed by the protracted N 1/2 of Sec. 8, T. 49 S., R. 58 E., Copper River Meridian, Alaska. The BLM decision stated in part:

> According to the location notices, the claims on the attached appendix are for parcels of land containing 40 acres each with the claims located by D. D. Hall as agent for EXVENCO. Within the meaning of 30 U.S.C. Section 35, it has been determined that a corporation is an "individual claimant", and therefore may not locate placer claims of more than 20 acres each.
>
> The Alaska State Statutes in Sec. 27.10.100 limit the size of individual placer claims in Alaska. The unit of placer locations in the state is 20 acres and no single or individual placer mining claim may be located in excess of 20 acres nor have a greater length than 1,320 feet.
>
> Under Sec. 27.10.140 of the State Statutes, a placer mining claim attempted to be located in violation of the law is null and void, and the whole area of it may be located by a qualified locator as if no earlier attempt had been made. Therefore, the claims listed on the attached appendix are declared null and void and the filings are rejected because the claims were located in violation of the State Statute limiting the size of individual placer claims in Alaska. The BLM case files will be closed when this decision becomes final.

Appellants in their statement of reasons on appeal object to this determination stating in pertinent part:

> The claims were clearly staked as placer associations in the names of John Hite, Spokane, Washington, and John Ruckmick, Denver, Colorado. The address given on the notices is simply a c/o or forwarding address. The regulations are quite clear that a precious metal placer association claim may be staked by two or more persons. Our only oversight may have been in not adding a "placer association" entry to the original location certificates, but the lack thereof would not change the meaning or intent of the claim position. Therefore, we demand the assignment of the aforementioned claims to their original, correct, and valid status.

On the mining claim location certificates submitted to BLM, in the blank space captioned "Name of Locator," the names Don Hall (Agent), John Hite, and John Ruckmick are listed. The address space for the locators is completed as follows: "c/o EXVENCO N 9516B Division, Spokane, Washington 99218." At the bottom right hand corner of the documents under locator's signature the signature of D. D. Hall (Agent) appears. The notices of location tend to support Hall's claim that he located the MP-1 through MP-8 claims on behalf of Hite and Ruckmick as association claims. The 1984 affidavits of assessment filed for the claims indicate the documents were prepared by Donald D. Hall (Agent), at the request of Exploration Ventures Co. (EXVENCO), which is listed on the affidavits as owner of the claims. There is nothing in the record to indicate that the claims were transferred to EXVENCO from Hite (an EXVENCO employee)

and Ruckmick (see 43 CFR 3833.3, Notice of Transfer and Interest), or to suggest that Hall was a locator acting on behalf of EXVENCO, rather than Hite and Ruckmick.

[1] Under the 1872 mining laws an association of claimants may locate an association placer claim encompassing up to 160 acres but no claim may include more than 20 acres per individual locator. 30 U.S.C. § 35 (1982). Thus a placer claim located by two individuals may include up to 40 acres. See 43 CFR 3842.1-2(c). However, a corporation is considered an individual claimant within the contemplation of 30 U.S.C. § 35 (1982), and as such, the size of a placer claim located on behalf of a corporation is limited to 20 acres. United States v. Toole, 224 F. Supp. 440 (D. Mont. 1963).

If each claim was located as an association placer claim on behalf of Hite and Ruckmick as alleged, the size of the claims would be in compliance with the applicable statute and regulation. However, a valid association location cannot be made by the use of "dummy locators" acting on behalf of others. See Owhyee Calcium Products, Inc., 72 IBLA 235 (1983); Big Horn Limestone, 46 IBLA 98 (1980). Thus, if the claims were located on behalf of EXVENCO, as concluded by BLM, the size of the claims would exceed the statutory limitation. Contrary to BLM's holding, the courts have held that a claim of excessive acreage in the location of a placer mining claim located under the Federal mining laws does not necessarily render the entire claim void. The claim is void only as to such excess. Zimmerman v. Funchion, 161 F. 857 (D. Alaska 1908). However, if a locator has knowledge of a concealed interest and is a party to the use of dummy locators, the location is deemed fraudulent and is invalid in its entirety. Cook v. Klonos, 164 F. 529 C.C.A. 402 (1908), modified on other grounds, 168 F. 700, 94 C.C.A. 144 (1909); Alumina Development Corp., 77 IBLA 366 (1983).

From our review of the record with this appeal we are unable to confirm BLM's conclusion that each of these claims was, in fact, filed on behalf of EXVENCO using dummy locators. 1/

Accordingly, we hereby set aside the BLM determination as to claims MP-3 (AA-53213), MP-4 (AA-53214), MP-7 (AA-53217), and MP-8 (AA-53218), and remand the case to BLM for further investigation into the circumstances of the location of these four claims. Appellants should be provided the opportunity to present evidence to support their statement that the claims were in fact located as association placer claims.

[2] BLM declared placer mining claims MP-1 (AA-53211), MP-2 (AA-53212), MP-5 (AA-53215), and MP-6 (AA-53216) void ab initio because they were located on lands segregated from mineral entry at the time of location, stating in pertinent part:

1/ We also note that if the location was, in fact, on behalf of EXVENCO, there is no evidence in the record that EXVENCO is a corporation rather than a partnership or association name.

Additionally, on December 12, 1975, the NW 1/4 and the N 1/2 SW 1/4 of section 8, T. 49 S., R. 58 E., Copper River Meridian were selected by Sealaska Corporation in application AA-10492 (Historical Place) under the Alaska Native Claims Settlement Act [ANCSA, 43 U.S.C. 1613(h)]. The selection segregated the lands from all forms of appropriation under the public land laws, including the mining laws. Placer mining claims, MP-1, MP-2, MP-5 and MP-6 lie within this area.

The record confirms the existence of the outstanding historical place application by Sealaska (AA-10492). Applications by regional corporations for fee title to historical places pursuant to 43 U.S.C. § 1613(h)(1) (1982) segregate the land from appropriation under the public land laws, including the mining and mineral leasing laws. See 43 CFR 2653.2(d). W.O.I.L. Associates, 92 IBLA 312 (1986). Because the land on which these claims were located was segregated from entry under the mining law at the time of location, BLM properly declared appellants' MP-1, MP-2, MP-5, and MP-6 mining claims null and void ab initio. See George E. Krier, 92 IBLA 101 (1986).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and set aside in part and remanded to BLM for further action consistent herewith.

Gail M. Frazier
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Kathryn A. Lynn
Administrative Judge
Alternate Member

April 24, 1987

IBLA 85-782	:	AA-53211 through AA-53218
	:	
DONALD D. HALL ET AL.	:	Mining Claims
	:	
	:	Petition for Reconsideration
	:	Granted; Decision Modified

ORDER

On January 13, 1987, the Office of the Solicitor, Alaska Region, filed a Motion for Reconsideration of the Board's decision issued December 15, 1986, in Donald D. Hall, 95 IBLA 33 (1986). No responsive brief was filed opposing that request. After due consideration, the petition for reconsideration is granted.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the second paragraph at page 35 of our decision in Donald D. Hall, supra, is amended to read:

> If each claim was located as an association placer claim on behalf of Hite and Ruckmick as alleged, the size of the claims would be in compliance with the applicable statute and regulation. However, a valid association location cannot be made by the use of "dummy locators" acting on behalf of others. See Owhyee Calcium Products, Inc., 72 IBLA 235 (1983); Big Horn Limestone, 46 IBLA 98 (1980). Thus, if the claims were located on behalf of EXVENCO, as concluded by BLM, the size of the claims would exceed the statutory limitation. If a locator has knowledge of a concealed interest and is a party to the use of dummy locators, the location is deemed fraudulent and is invalid in its entirety. Cook v. Klonos, 164 F. 529 C.C.A. 402 (1908), modified on other grounds, 168 F. 700, 94 C.C.A. 144 (1909); Alumina Development Corp., 77 IBLA 366 (1983).

Gail M. Frazier
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Kathryn A. Lynn
Administrative Judge
Alternate Member.